

the alien is inadmissible under section 212(a)(6)(C) or 212(a)(7) of the Act, or section 240 of the Act if the alien is inadmissible under any other grounds.

(iv) Parole may only be authorized pursuant to the authority contained in, and the standards prescribed in, section 212(d)(5) of the Act. The authority of the Director of the Nebraska Service Center to authorize parole from outside the United States under this provision shall expire on March 31, 2000.

(3) *Effect of departure on an outstanding warrant of exclusion, deportation, or removal.* If an alien who is the subject of an outstanding final order of exclusion, deportation, or removal departs from the United States, with or without an advance parole authorization, such final order shall be executed by the alien's departure. The execution of such final order shall not preclude the applicant from filing an Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) in accordance with § 212.2 of this chapter.

(u) *Tolling the physical presence in the United States provision for certain individuals—(1) Departure with advance authorization for parole.* In the case of an alien who departed the United States after having been issued an Authorization for Parole of an Alien into the United States (Form I-512), and who returns to the United States in accordance with the conditions of that document, the physical presence in the United States requirement of section 902(b)(1) of HRIFA is tolled while the alien is outside the United States pursuant to the issuance of the Form I-512.

(2) *Request for parole authorization from outside the United States.* In the case of an alien who is outside the United States and submits an application for parole authorization in accordance with paragraph (t)(2) of this section, and such application for parole authorization is granted by the Service, the physical presence requirement contained in section 902(b)(1) of HRIFA is tolled from the date the application is received at the Nebraska Service Center until the alien is paroled into the United States pursuant to the issuance of the Form I-512.

(3) *Departure without advance authorization for parole.* In the case of an otherwise-eligible applicant who departed the United States on or before December 31, 1998, the physical presence in the United States provision of section 902(b)(1) of HRIFA is tolled as of October 21, 1998, and until July 12, 1999.

(v) *Judicial review of HRIFA adjustment of status determinations.* Pursuant to the provisions of section 902(f) of HRIFA, there shall be no judicial appeal or review of any administrative determination as to whether the status of an alien should be adjusted under the provisions of section 902 of HRIFA.

[64 FR 25767, May 12, 1999, as amended at 65 FR 15844, Mar. 24, 2000]

**§ 245.18 How can physicians (with approved Forms I-140) that are serving in medically underserved areas or at a Veterans Affairs facility adjust status?**

(a) *Which physicians are eligible for this benefit?* Any alien physician who has been granted a national interest waiver under § 204.12 of this chapter may submit Form I-485 during the 6-year period following Service approval of a second preference employment-based immigrant visa petition.

(b) *Do alien physicians have special time-related requirements for adjustment?*

(1) Alien physicians who have been granted a national interest waiver under § 204.12 of this chapter must meet all the adjustment of status requirements of this part.

(2) The Service shall not approve an adjustment application filed by an alien physician who obtained a waiver under section 203(b)(2)(B)(ii) of the Act until the alien physician has completed the period of required service established in § 204.12 of this chapter.

(c) *Are the filing procedures and documentary requirements different for these particular alien physicians?* Alien physicians submitting adjustment applications upon approval of an immigrant petition are required to follow the procedures outlined within this part with the following modifications.

(1) Delayed fingerprinting. Fingerprinting, as noted in the Form I-485 instructions, will not be scheduled at the time of filing. Fingerprinting will be scheduled upon the physician's

completion of the required years of service.

(2) Delayed medical examination. The required medical examination, as specified in §245.5, shall not be submitted with Form I-485. The medical examination report shall be submitted with the documentary evidence noting the physician's completion of the required years of service.

(d) *Are alien physicians eligible for Form I-766, Employment Authorization Document?*

(1) Once the Service has approved an alien physician's Form I-140 with a national interest waiver based upon full-time clinical practice in an underserved area or at a Veterans Affairs facility, the alien physician should apply for adjustment of status to that of lawful permanent resident on Form I-485, accompanied by an application for an Employment Authorization Document (EAD), Form I-765, as specified in §274a.12(c)(9) of this chapter.

(2) Since section 203(b)(2)(B)(ii) of the Act requires the alien physician to complete the required employment before the Service can approve the alien physician's adjustment application, an alien physician who was in lawful nonimmigrant status when he or she filed the adjustment application is not required to maintain a nonimmigrant status while the adjustment application remains pending. Even if the alien physician's nonimmigrant status expires, the alien physician shall not be considered to be unlawfully present, so long as the alien physician is practicing medicine in accordance with §204.5(k)(4)(iii) of this chapter.

(e) *When does the Service begin counting the physician's 5-year or 3-year medical practice requirement?* Except as provided in this paragraph, the 6-year period during which a physician must provide the required 5 years of service begins on the date of the notice approving the Form I-140 and the national interest waiver. Alien physicians who have a 3-year medical practice requirement must complete their service within the 4-year period beginning on that date.

(1) If the physician does not already have employment authorization and so must obtain employment authorization before the physician can begin work-

ing, then the period begins on the date the Service issues the employment authorization document.

(2) If the physician formerly held status as a J-1 nonimmigrant, but obtained a waiver of the foreign residence requirement and a change of status to that of an H-1B nonimmigrant, pursuant to section 214(1) of the Act, as amended by section 220 of Public Law 103-416, and §212.7(c)(9) of this chapter, the period begins on the date of the alien's change from J-1 to H-1B status. The Service will include the alien's compliance with the 3-year period of service required under section 214(1) in calculating the alien's compliance with the period of service required under section 203(b)(2)(B)(ii)(II) of the Act and this section.

(3) An alien may not include any time employed as a J-1 nonimmigrant physician in calculating the alien's compliance with the 5 or 3-year medical practice requirement. If an alien is still in J-1 nonimmigrant status when the Service approves a Form I-140 petition with a national interest job offer waiver, the aggregate period during which the medical practice requirement period must be completed will begin on the date the Service issues an employment authorization document.

(f) *Will the Service provide information to the physician about evidence and supplemental filings?* Upon receipt of the adjustment application, the Service shall provide the physician with the following information and projected timetables for completing the adjustment process.

(1) The Service shall note the date that the medical service begins (provided the physician already had work authorization at the time the Form I-140 was filed) or the date that an employment authorization document was issued.

(2) A list of the evidence necessary to satisfy the requirements of paragraphs (g) and (h) of this section.

(3) A projected timeline noting the dates that the physician will need to submit preliminary evidence two years and 120 days into his or her medical service in an underserved area or VA facility, and a projected date six years and 120 days in the future on which the

physician's final evidence of completed medical service will be due.

(g) *Will physicians be required to file evidence prior to the end of the 5 or 3-year period?*

(1) For physicians with a 5-year service requirement, no later than 120 days after the second anniversary of the approval of Petition for Immigrant Worker, Form I-140, the alien physician must submit to the Service Center having jurisdiction over his or her place of employment documentary evidence that proves the physician has in fact fulfilled at least 12 months of qualifying employment. This may be accomplished by submitting the following.

(i) Evidence noted in paragraph (h) of this section that is available at the second anniversary of the I-140 approval.

(ii) Documentation from the employer attesting to the full-time medical practice and the date on which the physician began his or her medical service.

(2) Physicians with a 3-year service requirement are not required to make a supplemental filing, and must only comply with the requirements of paragraph (h) of this section.

(h) *What evidence is needed to prove final compliance with the service requirement?* No later than 120 days after completion of the service requirement established under § 204.12(a) of this section, an alien physician must submit to the Service Center having jurisdiction over his or her place of employment documentary evidence that proves the physician has in fact satisfied the service requirement. Such evidence must include, but is not limited to:

(1) Individual Federal income tax returns, including copies of the alien's W-2 forms, for the entire 3-year period or the balance years of the 5-year period that follow the submission of the evidence required in paragraph (e) of this section;

(2) Documentation from the employer attesting to the full-time medical service rendered during the required aggregate period. The documentation shall address instances of breaks in employment, other than routine breaks such as paid vacations;

(3) If the physician established his or her own practice, documents noting

the actual establishment of the practice, including incorporation of the medical practice (if incorporated), the business license, and the business tax returns and tax withholding documents submitted for the entire 3 year period, or the balance years of the 5-year period that follow the submission of the evidence required in paragraph (e) of this section.

(i) *What if the physician does not comply with the requirements of paragraphs (f) and (g) of this section?* If an alien physician does not submit (in accordance with paragraphs (f) and (g) of this section) proof that he or she has completed the service required under § 204.12(a) of this chapter, the Service shall serve the alien physician with a written notice of intent to deny the alien physician's application for adjustment of status and, after the denial is finalized, to revoke approval of the Form I-140 and national interest waiver. The written notice shall require the alien physician to provide the evidence required by paragraph (f) or (g) of this section within 30 days of the date of the written notice. The Service shall not extend this 30-day period. If the alien physician fails to submit the evidence within the 30-day period established by the written notice, the Service shall deny the alien physician's application for adjustment of status and shall revoke approval of the Form I-140 and of the national interest waiver.

(j) *Will a Service officer interview the physician?*

(1) Upon submission of the evidence noted in paragraph (h) of this section, the Service shall match the documentary evidence with the pending form I-485 and schedule the alien physician for fingerprinting at an Application Support Center.

(2) The local Service office shall schedule the alien for an adjustment interview with a Service officer, unless the Service waives the interview as provided in § 245.6. The local Service office shall also notify the alien if supplemental documentation should either be mailed to the office, or brought to the adjustment interview.

(k) *Are alien physicians allowed to travel outside the United States during the mandatory 3 or 5-year service period?*

An alien physician who has been granted a national interest waiver under § 204.12 of this chapter and has a pending application for adjustment of status may travel outside of the United States during the required 3 or 5-year service period by obtaining advanced parole prior to traveling. Alien physicians may apply for advanced parole by submitting form I-131, Application for Travel Document, to the Service office having jurisdiction over the alien physician's place of business.

(1) *What if the Service denies the adjustment application?* If the Service denies the adjustment application, the alien physician may renew the application in removal proceedings.

[65 FR 53895, Sept. 6, 2000; 65 FR 57861, Sept. 26, 2000; 65 FR 57944, Sept. 27, 2000]

## **PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT**

Sec.

245a.1 Definitions.

245a.2 Application for temporary residence.

245a.3 Application for adjustment from temporary to permanent resident status.

245a.4 Adjustment to lawful resident status of certain nationals of countries for which extended voluntary departure has been made available.

245a.5 Temporary disqualification of certain newly legalized aliens from receiving benefits from programs of financial assistance furnished under federal law.

AUTHORITY: 8 U.S.C. 1101, 1103, 1255a and 1255a note.

### **§ 245a.1 Definitions.**

As used in this chapter:

(a) *Act* means the Immigration and Nationality Act, as amended by The Immigration Reform and Control Act of 1986.

(b) *Service* means the Immigration and Naturalization Service (INS).

(c)(1) *Resided continuously* as used in section 245A(a)(2) of the Act, means that the alien shall be regarded as having resided continuously in the United States if, at the time of filing of the

application for temporary resident status:

An alien who after appearing for a scheduled interview to obtain an immigrant visa at a Consulate or Embassy in Canada or Mexico but who subsequently is not issued an immigrant visa and who is paroled back into the United States, pursuant to the state-side criteria program, shall be regarded as having been granted advance parole by the Service.

(i) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

(ii) The alien was maintaining residence in the United States; and

(iii) The alien's departure from the United States was not based on an order of deportation.

An alien who has been absent from the United States in accordance with the Service's advance parole procedures shall not be considered as having interrupted his or her continuous residence as required at the time of filing an application.

(2) *Continuous residence*, as used in section 245A(b)(1)(B) of the Act, means that the alien shall be regarded as having resided continuously in the United States if, at the time of applying for adjustment from temporary residence to permanent resident status: No single absence from the United States has exceeded thirty (30) days, and the aggregate of all absences has not exceeded ninety (90) days between the date of granting of lawful temporary resident status and of applying for permanent resident status, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period(s) allowed.

(d) In the term *alien's unlawful status was known to the government*, the term *government* means the Immigration and